

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-185422

DATE: January 29, 1976

MATTER OF: Case, Inc.; Bethune Quilting Company

DIGEST:

1. Questions concerning small business size status are not for consideration by GAO, since conclusive authority over such matters is vested by statute in SBA.
2. Contention that bidder is not manufacturer or regular dealer within purview of Walsh-Healey Act is not for consideration by GAO since jurisdiction-as to these matters rests with contracting officer subject to final review by Department of Labor.

Case, Inc. (Case) protested against an award to Bethune Manufacturing Company (Bethune), under invitation for bids No. DSA100-76-B-0317, a total small business set-aside, issued by the Defense Personnel Support Center, Philadelphia, Pennsylvania. Case contends that an award to Bethune violates the Walsh-Healey Act and the small business restriction.

Case alleges that Bethune is not a manufacturer or regular dealer in textile items, lacks a manufacturing facility, and therefore does not comply with the Walsh-Healey Act imposing standards for contractors working for the Federal Government. Further, Case argues that Bethune actually represents a large manufacturing company, and does not comply with the small business restriction of the procurement.

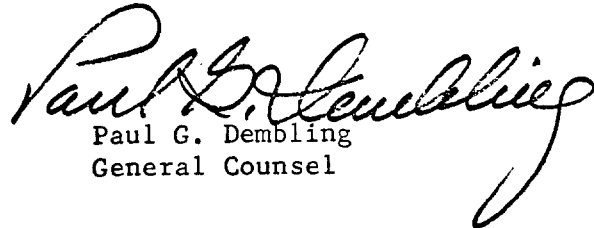
Under 15 U.S.C. 637(b)(6) and (7), a decision of the Small Business Administration (SBA) regarding the size status of a concern and the competency of a small business to perform a Government contract is conclusive. Therefore, an SBA determination of size status of a concern or issuance of a Certificate of Competency is not subject to review by our Office. See Suburban Industrial Maintenance Company, B-181980, August 30, 1974, 74-2 CPD 135; 53 Comp. Gen. 434, 438 (1973); 53 id. 344, 346 (1973).

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With reference to the Walsh-Healey Act issue, numerous decisions of our Office have recognized that the responsibility for applying the criteria of the Walsh-Healey Act is vested in the contracting officer and the Department of Labor. Our Office is not authorized to review determinations as to whether particular firms are regular dealers or manufacturers within the purview of the Walsh-Healey Act and we have declined jurisdiction in this area because such determinations rest with the contracting officer subject to final review by the Department of Labor. See Arista Co., B-181091, July 10, 1974, 74-2 CPD 20; B-173808, October 26, 1971; B-172398, August 3, 1971.

Accordingly, the issues presented are not properly for consideration by our Office.

In addition, Bethune Quilting Company has protested to our Office that notwithstanding Case's allegations, Bethune is entitled to the award. However, in view of our lack of jurisdiction to decide Case's protest on the merits, we are closing our file on the matter without further action.


Paul G. Dembling
General Counsel